

## INTELLITECH CONSULTING ENTERPRISES, INC.



28 State Street 11<sup>th</sup> Floor, Boston, MA 02109.

Phone: (617) 573-5113 Fax: (781) 735-8013

ATTN: Lee Quinn  
Antitrust Division  
U.S. Department of Justice  
Liberty Place, Suite 300  
325 7th Street NW  
Washington, DC 20530

September 22, 2005

RE: Competition Policy and the Real Estate Industry

Mrs. Quinn,

MLS Property Information Network states on its website <http://www.mlspin.com> that it is "the largest MLS in New England, and one of the top ten in the nation" it therefore clearly has control over the real estate data in the area.

The company that I work for is a minority owned software Development Company that has developed a software solution that enables Real Estate Professionals to transact business online through the Internet. Specifically it enables the real estate professional to help educate and provide information on real estate for sale and estimated real estate valuations to consumers who request said information. This is often referred to as Internet Data Exchange (IDX) and Virtual Office Web Site (VOW).

I recently contacted MLS Property Information Network (MLSPIN) in regard to its Third Party Data Access Policy. In response they sent me the enclosed Agreement (see enclosed copy of the Agreement) entitled "Third Party Access Agreement" which I signed and sent back with the payment of the data access fee (\$1,200). Clearly the Agreement is intended to be a License Agreement between the MLS and a Vendor that resells its services to subscribers of the MLS as the Agreement states these facts in several places (please refer to the Agreement for validation).

Several weeks after signing the enclosed Agreement and before MLSPIN honored the executed Agreement, I was contacted by MLS PIN President and Chief Executive Officer, Kathy Condon (See enclosed email dated September 22, 2005). Mrs. Condon and several other MLS PIN employees have stated to me that the Agreement that they previously provided which was signed by both parties was not intended to be a "Vendor" Agreement and that it was not binding. MLS PIN has further stated that it is changing the terms of the Agreement as it pertains to the data access fee. The fee is changing from \$1,200 per year to \$6,000.

RECEIVED

SEP 27 2005 JT

LITIGATION & ADJUDICATION  
U.S. DEPT. OF JUSTICE

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To this day my access to the data has been withheld. I feel that this case represents clearly, that the business operations of the Multiple Listing Service (MLS) should be further evaluated. Certainly the question of Anti Trust, Trade, and Discrimination, should be evaluated as it pertains to the enclosed situation in terms of how MLSPIN conducts its business with other vendors in relation to my company. For example is Intellitech being charged a higher data access rate because of its business model "pro consumers" Why is MLSPIN changing the terms of an Agreement that was signed only three weeks ago? Etc.



William Hanlon, Vice President  
Intellietch Consulting Enterprises, Inc.  
617-573-5113 Ext 4011  
781-608-9998 Cell  
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COPY

### THIRD PARTY ACCESS AGREEMENT

THIS THIRD PARTY ACCESS AGREEMENT ("this Agreement") is made and entered into as of \_\_\_\_\_, 2005, by and between MLS Property Information Systems, Inc., a Massachusetts corporation (the "Company"), with an address at 904 Hartford Turnpike, Shrewsbury, Massachusetts 01545, and IntelliTech Consulting Ent, Inc., a Delaware corporation ("Vendor").

#### RECITALS

A. The Company owns and operates a real estate multiple listing service (the "Service").

B. The Company maintains a database (the "Database") and has developed various programs and applications (collectively, the "Software") that enable the Company to provide property listing data, photographs and other information from the Database (collectively, as the same may vary from time to time, the "Data") to its eligible participants, subscribers and other authorized parties that are in good standing with the Company (collectively, the "Subscribers").

C. Vendor is in the business of providing online marketing products and services ("Vendor's Products/Services") to licensed real estate brokers and agents that contract with Vendor for Vendor's Products/Services.

D. Vendor's Products/Services enable its customers to establish and maintain (i) what are commonly known as "virtual office websites" (each, a "VOW") or (ii) programs that allow Vendor's customers to gain access to data or data subsets through a PDA, cell phone or other wireless device for the purpose of scheduling appointments or for other business purposes that Vendor from time to time may specify (each a "Wireless Data Access Program").

E. Vendor already has contracted with certain of the Subscribers, and expects to contract with additional Subscribers, to provide Vendor's Products/Services enabling each such Subscriber (a "Contracting Subscriber") to establish and maintain a VOW or a Wireless Data Access Program.

F. Vendor requires access to the Database and the Data for the sole and exclusive purpose (the "Permitted Use") of enabling each Contracting Subscriber to establish and maintain a VOW, a Data Access Program or such other program or product as the Company, in its sole discretion, hereafter may approve in writing (an "Approved Program").

G. Any VOW, Data Access Program or Approved Program may be operated by a Contracting Subscriber only in strict compliance with the Company's rules and regulations, as they may be amended from time to time (the "Rules and Regulations").

H. The Company is willing to grant Vendor access to the Database for the Permitted Use, and Vendor is willing to accept such access, pursuant to the terms and subject to the conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the Company and Vendor hereby agree as follows:

1. Access: Subject to the terms and conditions of this Agreement, the Company hereby grants Vendor access to the Database and the Data solely and exclusively (a) for the Permitted Use by Contracting Subscribers and (b) by means of a data feed to be made available by the Company in such manner as the Company shall determine from time to time in its sole and absolute discretion (the "Access Connection").

2. Proprietary Rights:

2.1 This Agreement does not grant, nor shall it be construed to grant, to Vendor any ownership or other right, title or interest in or to any of the Data or the Database. The Company retains all of its right, title and interest in and to, and its ownership of, all copyrights, trademarks, trade secrets, patents and all other intellectual property rights relating or applying to the Data and to the Database. Vendor is hereby expressly prohibited from copying, reproducing, reverse engineering, decompiling, disassembling, remarketing, recommercializing, disseminating and/or otherwise using any or all of the Data or the Database for any purpose, except only for Vendor's use of the Data and the Database for the Permitted Use.

2.2 Vendor acknowledges the validity and ownership of the Company's trademarks and trade names and agrees not to challenge the Company's rights to use its own trademarks or trade names.

3. Limitations on Transferability and Use; Non-Exclusivity. Vendor agrees that (a) except only for the Permitted Use by Contracting Subscribers, Vendor may not use, publish, license, distribute or otherwise disseminate all or any portion of the Data or the Database, in any form or medium, to any other individuals or entities or give any other individuals or entities access to all or any portion of either the Data or the Database, and (b) the Company may make the Data and the Database available to other individuals or entities.

4. Confidentiality and Nondisclosure:

4.1 Vendor hereby acknowledges that it may be exposed to valuable, confidential and proprietary information of the Company relating to its business, affairs and operations, including without limitation the Data, the Database and the Software (the "Confidential Information").

4.2 Vendor, for itself and for its employees, contractors, consultants and agents, agrees that (i) it will safeguard the Company's Confidential Information with the same degree of care that User uses to protect its own Confidential Information; (ii) it will maintain the confidentiality of the Company's Confidential Information; (iii) it will not use, or cause or permit its employees, contractors, consultants or agents to use, the Company's Confidential Information, except for the Permitted Use; and (iv) it will not, nor will it cause or permit its employees, contractors, consultants or agents to, disseminate, disclose, sell, publish or otherwise make available the Company's Confidential Information to any third party without the prior written consent of the Company, which consent the Company may condition or withhold in its

sole and absolute discretion. Vendor acknowledges and agrees that any breach of this Section 4.2 or of Section 3 above and Section 5 below will irreparably harm the Company. Accordingly, in the event of any such breach, the Company will be entitled to seek injunctive relief in addition to any other remedies that it may have at law or in equity.

5. Obligations of Vendor: In consideration of the access granted hereunder, Vendor hereby agrees that Vendor:

5.1 Will not permit any access to the Service, the Data or the Database through the Access Connection or otherwise by any individual or entity other than those Contracting Subscribers who or which are in good standing under and in compliance with the Rules and Regulations;

5.2 Will not make any use, alteration, adaptation, addition, change or revision of or to any of the Data or the Database, other than to make it available to Contracting Subscribers for the Permitted Use;

5.3 Will provide Vendor's Products/Services in such a way that they do not impede, impair, interfere with, slow down or damage the performance of the Service in any way;

5.4 Will not enter into any license, sublicense, access, electronic connection or other agreement or arrangement, the effect of which would be to permit access to the Data or the Database, or any portion thereof, to any individual or entity other than the Contracting Subscribers for the Permitted Use;

5.5 Will not subcontract, assign, delegate or otherwise transfer any right or obligation under this Agreement without the Company's prior written consent, which consent the Company may condition or withhold in its sole and absolute discretion;

5.5 Will establish and maintain firewalls, filters and such additional and/or complementary security systems in place as may be necessary in order to assure that the Data and the Database are secure and that the Access Connection will not be used to gain access to the Data or the Database, except by the Contracting Subscribers for the Permitted Use;

5.6 Will deliver to the Company not less frequently than once each month, and at such other times as the Company may request in writing, a list containing the names, addresses and agent identification numbers of all of Vendor's customers that are Contracting Subscribers and the dates on which each such customer became a Contracting Subscriber;

5.7 Will, by means of electronic or other status code provided to it by the Company, determine, no less frequently than once each day, if each Contracting Subscriber is or is not in good standing as a participant in the Service;

5.8 Will immediately suspend the transfer of any Data to a Contracting Subscriber and will suspend that Contracting Subscriber's access to the Service, the Data and the Database immediately upon either (a) Vendor's determining (as provided in Section 5.7) that the Contracting Subscriber is not in good standing as a participant in the Service or (b) Vendor's receipt of a written, oral or electronic notice from the Company stating that the Contracting

Subscriber either has been suspended from participation in the Service or has ceased to be a Subscriber to the Service, such suspension by Vendor, in either case, to continue until such time as the Company may notify Vendor in writing, orally or by electronic means that the Contracting Subscriber is once again a Subscriber in good standing under and in compliance with the Rules and Regulations; and

5.9 Will permit representatives of the Company, during normal business hours, to review the books and records of Vendor at Vendor's place of business and inspect Vendor's operations in order to determine if Vendor is in compliance with the terms and conditions of this Agreement. *Said books and records as they pertain to this service only.* *WBT*

6. No Representations or Warranties. In granting Vendor access to the Data and the Database for the Permitted Use, the Company makes no representation or warranty of any kind with respect to the Access Connection, the Data or the Database.

7. Payment: Vendor shall be required to pay the Company \$100.00 per month (on the 30<sup>th</sup> day of each month) during the term of this Agreement or such other amount as the Company, from time to time may impose, in order to reimburse the Company for the costs and expenses that the Company incurs in granting Vendor access to the Data and the Database. The Company will notify Vendor at least thirty (30) days in advance of any change in the fees hereunder.

8. Term and Termination; Suspension of Access:

8.1 The term of this Agreement shall continue until terminated as provided herein.

8.2 The Company or Vendor may terminate this Agreement by giving not less than thirty (30) days' prior written notice to the other party of its intention to terminate, and this Agreement shall terminate upon the date specified in the notice.

8.3 Upon the happening of any of the following events, the Company may suspend Vendor's Access Connection, or it may terminate this Agreement, as hereinafter provided:

8.3.1 If at any time or from time to time Vendor's use of or access to the Data and/or the Database in any way damages the performance of the Service or in any way impedes, impairs, interferes with or slows down the ability of the Company's Subscribers to gain access to and/or to use the Service, then, immediately upon giving written notice to Vendor, the Company may suspend Vendor's Access Connection until Vendor has cured the breach to the Company's satisfaction. If Vendor for any reason has not cured the breach within forty-five (45) days after the day on which the Company suspended Vendor's Access Connection, the Company may terminate this Agreement at any time thereafter by giving written notice of termination to Vendor.

8.3.2 If at any time Vendor breaches any of the provisions of Section 3 or Section 5 of this Agreement, the Company may suspend Vendor's Access Connection until Vendor has cured the breach to the Company's satisfaction and has compensated the Company for any damages or loss suffered by the Company as a result of such breach. If Vendor for any reason has not cured the breach and paid the required compensation to the Company within thirty (30) days after the date on which the Company suspended Vendor's Access Connection,

the Company may terminate this Agreement at any time thereafter by giving written notice of termination to Vendor and may continue to pursue such legal and equitable remedies as it shall deem appropriate.

8.3.3 If at any time Vendor fails to make timely payment of any fee required to be paid, or reimbursement required to be made, under Section 7 of this Agreement, and if such breach has not been cured within five (5) business days after the Company has delivered notice of the same to Vendor, this Agreement shall be deemed to have been automatically terminated by the Company at the end of such cure period without the requirement of any further action by the Company.

8.3.4 Effective upon the giving of written notice to Vendor, if (i) all or a substantial portion of the assets of Vendor are transferred to an assignee for the benefit of creditors, to a receiver, or to a trustee in bankruptcy, (ii) a proceeding is commenced by or against Vendor for relief under the bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days, or (iii) Vendor is adjudged bankrupt.

8.4 Simultaneously with the termination of this Agreement or the suspension of Vendor's access to and use of the Data or the Database, Vendor shall cease all such access and use hereunder and shall cooperate with the Company in terminating the Access Connection and deleting the Data and the Database from Vendor's servers.

8.5 Immediately upon termination of this Agreement, Vendor shall pay or reimburse all fees and other costs and expenses, if any, then owing to the Company, together with the costs and expenses, if any, incurred by the Company in terminating the Access Connection. Vendor acknowledges and agrees that it shall not have, nor shall it assert, any claim for losses, damages or any other amount as a result of or in connection with the termination of this Agreement.

8.6 The remedies provided for in this Section 8 shall be in addition to any other rights or remedies that the Company may have at law or in equity.

9. Survival of Terms: The provisions of this Section and those contained in Sections 2, 3, 4, 5, 6, 8, of this Agreement shall survive termination of this Agreement, as will any cause of action or claim of either party, whether in law or in equity, based on any breach or default of this Agreement.

10. Notices: Notices required or permitted to be given pursuant to this Agreement shall be effective when received and shall be sufficient if given in writing, either by hand delivery, by facsimile with confirmation of receipt, by certified or registered United States mail, return receipt requested, with all postage prepaid, or by nationally recognized overnight commercial courier service, with all delivery charges prepaid, in each case sent (a) to the Company, care of Ms. Kathleen E. Condon, President and CEO, at the address set forth on the first page of this Agreement and (b) to Vendor at the address set forth on the signature page of this Agreement.

11. Miscellaneous:

11.1 Entire Agreement; Amendment: This Agreement sets forth the full and complete understanding of the parties with respect to the subject matter of this Agreement and supersedes all previous oral or written agreements, understandings or arrangements between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended except in writing, signed by an authorized officer or agent of each party to this Agreement. The failure of either the Company or Vendor on any occasion to enforce one or more of the provisions of this Agreement shall not be deemed a waiver of those provisions or of the right of the Company or Vendor thereafter to enforce those provisions. The Company's election on any one occasion to suspend access to the Data and the Database, rather than to terminate this Agreement, shall not bind the Company on any other occasion.

11.2 No Joint Venture: Nothing in this Agreement shall be deemed to create a partnership or joint venture or a relationship of employer/employee or principal/agent between the parties hereto. Neither party shall have the authority to enter into any contracts on behalf of the other party.

11.3 Governing Law and Jurisdiction: This Agreement shall be governed by and interpreted and enforced in accordance with the laws and decisions of The Commonwealth of Massachusetts. The venue of any action or proceeding brought by either party against the other arising out of this Agreement shall, to the extent legally permissible, be in the City of Boston, Massachusetts, or the City of Worcester, Massachusetts.

11.4 Severability: If any provision of this Agreement for any reason shall be held to be invalid, unenforceable or illegal, that provision shall be severed from this Agreement, and such invalidity, unenforceability or illegality shall not affect any other provision of this Agreement.

[The Remainder Of This Page Is Intentionally Left Blank]



IN WITNESS WHEREOF, the parties have executed this agreement as of the date first set forth above.

MLS PROPERTY INFORMATION  
NETWORK, INC.

By: Kathleen Condon  
Kathleen Condon  
President

VENDOR: Intellitect Consulting Firm, Inc.

By: William Hanford  
Name: William Hanford  
Title: <sup>Vice</sup> President

Address of Vendor (Please Print):

28 State Street 11th Fl  
Boston MA 02109

**Bill Hanlon**

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**From:** Kathy Condon [kcondon@mlspin.com]  
**Sent:** Thursday, September 22, 2005 11:16 AM  
**To:** bhanlon@intellitech.net  
**Cc:** Tony Mastroianni  
**Subject:** RE: Third Party Access Agreement

Bill:

In my discussion with Tony today, he told me he had already informed me that if you are using the information ONLY for Norwell Realty, then a new contract needs to be signed for Norwell Realty only. IF you are using the contract as a vendor, offering services to other real estate firms in addition to Norwell Realty – then the cost is actually \$500.00 per month, which comes out to \$6,000 a year and, I beg to differ, but very many vendors are paying that small amount. Please let me know which choice you'd like to make. Either way, I do not have a fully executed agreement based on the changes you made to the original agreement which were not approved or signed off on by me. If you'd prefer to talk, I am in the office all day today.

*Kathy Condon*  
*President and Chief Executive Officer*  
*MLS Property Information Network, Inc.*  
*904 Hartford Turnpike*  
*Shrewsbury, MA 01545*  
*508-845-1011, x 7120*  
**www.mlspin.com**

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**From:** Bill Hanlon [mailto:bhanlon@intellitech.net]  
**Sent:** Wednesday, September 21, 2005 5:11 PM  
**To:** Kathy Condon  
**Subject:** Third Party Access Agreement

Hello Kathy,

It has been a long time since we last spoke. I hope all is well. I have been working with Cristina Castro in finalizing the "Third Party Access Agreement" which were signed and sent back to MLS PIN several weeks ago. She informed me that she was unable to process the Agreements despite the fact that they have been signed and executed by both parties. Cristina stated that when she sent the Agreements she was doing so with the understanding that my wife's real estate company "Norwell Realty" was going to be executing the Agreements. I informed Cristina that based on the contractual obligations of the Agreement, and the fact that Norwell Realty is not in the business of providing "online marketing products and services to licensed real estate brokers and agents" as stated in Section C of the Agreement; ICE executed the Agreement since ICE is providing Norwell Realty with its Mynetlistings IDX/VOW service. Additionally the terms of the Agreement are worded for a vendor not a Real Estate company, and the Vendor section of the Agreement was left blank.

Cristina asked that I speak with Tony. Tony informed me that the Agreement that was worded for a Real Estate Company and not a Vendor. Additionally he stated that if I wanted to proceed as a Vendor the access fee would increase from \$1,200 to \$ 5,000 annually. He also stated that this was the fee that the other MLS PIN vendors are required to pay.

The agreements that were sent specifically state that they are Vendor Third Party Agreements, and Section C states "Vendor is in the business of providing online marketing products and services to licensed real estate brokers and agents that contract with vendor for Vendor's Products/Services" In regard to payment; Section 7 states "Vendor shall be required to pay the Company \$100.00 per month" Note this was prepaid by ICE.

9/22/2005

I have also spoken with a couple of existing MLS PIN vendors who informed me that they are not paying \$5,000 annually to access the data.

I have always had a good working relationship with MLS PIN, and would appreciate it if you could provide me with an explanation in regard to why my access has been held up for several weeks and the terms of the Agreement are being changed specifically for my company.

If it is more convenient to speak by phone please send me a reply and I will contact you. I sent this message by email out of respect for how busy you must be.

Best Regards,

Bill Hanlon

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Bill Hanlon, Vice President  
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Confidentiality Notice:

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9/22/2005